



Supreme Court of California
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NEWS RELEASE

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FOR IMMEDIATE RELEASE

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Summary of Cases Accepted and Related Actions During Week of November 14, 2016

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#16-394 *In re Butler*, S237014. (A139411; nonpublished order; Alameda County Superior Court; 91694B.) Petition for review after the Court of Appeal denied a motion to modify an order implementing a settlement agreement. This case presents the following issue: Should the Board of Parole Hearings be relieved of its obligations arising from a 2013 settlement to continue calculating base terms for life prisoners and to promulgate regulations for doing so in light of the 2016 statutory reforms to the parole suitability and release date scheme for life prisoners, which now mandate release on parole upon a finding of parole suitability?

#16-395 *In re C.H.*, S237762. (A146120; 2 Cal.App.5th 1139; Contra Costa County Superior Court; J1100679.) Petition for review after the Court of Appeal affirmed an order granting a petition to recall sentence. This case presents the following issues: Did the trial court err by refusing to order the expungement of juvenile's DNA record after his qualifying felony conviction was reduced to a misdemeanor under Proposition 47 (Pen. Code § 1170.18)? Does the retention of juvenile's DNA sample violate equal protection because a person who committed the same offense after Proposition 47 was enacted would be under no obligation to provide a DNA sample?

#16-396 *People v. Chatman*, S237374. (A144196; 2 Cal.App.5th 561; Alameda County Superior Court; C140542.) Petition for review after the Court of Appeal reversed an order denying a petition for a certificate of rehabilitation. This case presents the following issue: Does Penal Code section 4852.01 deny equal protection by making a former felony probationer, who was subsequently incarcerated on a new offense, ineligible for a certificate of rehabilitation, because a former felony prisoner, who was subsequently incarcerated on a new offense, is not ineligible?

#16-397 *Hopkins v. Superior Court*, S237734. (B270503; 2 Cal.App.5th 1275; Los Angeles County Superior Court; BS160423.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Can a trial court grant pretrial diversion under Penal Code section 1001.80 on a charge of driving under the influence despite the ban on diversion in Vehicle Code section 23640?

#16-398 *People v. Castro*, S237117. (B262307; nonpublished opinion; Los Angeles County Superior Court; VA130990.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Merritt*, S231644 (#16-65), which presents the following issue: Is the failure to instruct the jury on the elements of a charged offense reversible per se or subject to harmless error review? (See *Neder v. United States* (1999) 527 U.S. 1; *People v. Mil* (2012) 53 Cal.4th 400; *People v. Cummings* (1993) 4 Cal.4th 1233.)

#16-399 *People v. Garcia*, S237667. (B267788; nonpublished opinion; Los Angeles County Superior Court; NA030813.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Chaney*, S223676 (#15-13), and *People v. Valencia*, S223825 (#15-14), which present the following issue: Does the definition of “unreasonable risk of danger to public safety” (Pen. Code, § 1170.18, subd. (c)) under Proposition 47 (“the Safe Neighborhoods and Schools Act”) apply on retroactivity or other grounds to resentencing under the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126)?

#16-400 *In re J.E.*, S237790. (A146105; nonpublished opinion; Contra Costa County Superior Court; J1100644.) Petition for review after the Court of Appeal affirmed an order granting a petition to recall sentence. The court ordered briefing deferred pending decision in *In re C.B.*, S237801 (#16-384), and *In re C.H.*, S237762 (#16-395), which present the following issues: Did the trial court err by refusing to order the expungement of juvenile’s DNA record after his qualifying felony conviction was reduced to a misdemeanor under Proposition 47 (Pen. Code § 1170.18)? Does the retention of juvenile’s DNA sample violate equal protection because a person who committed the same offense after Proposition 47 was enacted would be under no obligation to provide a DNA sample?

#16-401 *People v. McCarty*, S237390. (C080791; nonpublished opinion; Sutter County Superior Court; CRF101311.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Valenzuela*, S232900 (#16-97), which presents the following issue: Is a defendant eligible for resentencing on the penalty enhancement for serving a prior

prison term on a felony conviction after the superior court has reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47?

#16-402 *People v. Smith*, S237768. (B260586; nonpublished opinion; Los Angeles County Superior Court; MA062986.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense.

#16-403 *People v. Walker*, S237664. (E064513; nonpublished opinion; San Bernardino County Superior Court; FVI08775.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

The court ordered briefing in *Smith* and *Walker* deferred pending decision in *People v. Page*, S230793 (#16-28), which presents the following issue: Does Proposition 47 (“the Safe Neighborhoods and Schools Act”) apply to the offense of unlawful taking or driving a vehicle (Veh. Code, § 10851), because it is a lesser included offense of Penal Code section 487, subdivision (d), and that offense is eligible for resentencing to a misdemeanor under Penal Code sections 490.2 and 1170.18?

#16-404 *People v. VanVleck*, S237219. (D069893, D069894; 2 Cal.App.5th 355; San Diego County Superior Court; CA264780, CA264781.) Petition for review after the Court of Appeal reversed orders suspending proceedings in criminal cases. The court ordered briefing deferred pending decision in *Hopkins v. Superior Court*, S237734 (#16-397), which presents the following issue: Can a trial court grant pretrial diversion under Penal Code section 1001.80 on a charge of driving under the influence despite the ban on diversion in Vehicle Code section 23640?

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The Supreme Court of California is the state's highest court and its decisions are binding on all other California state courts. The court's primary role is to decide matters of statewide importance and to maintain uniformity in the law throughout California by reviewing matters from the six districts of the California Courts of Appeal and the fifty-eight county superior courts (the trial courts). Among its other duties, the court also decides all capital appeals and related matters and reviews both attorney and judicial disciplinary matters.